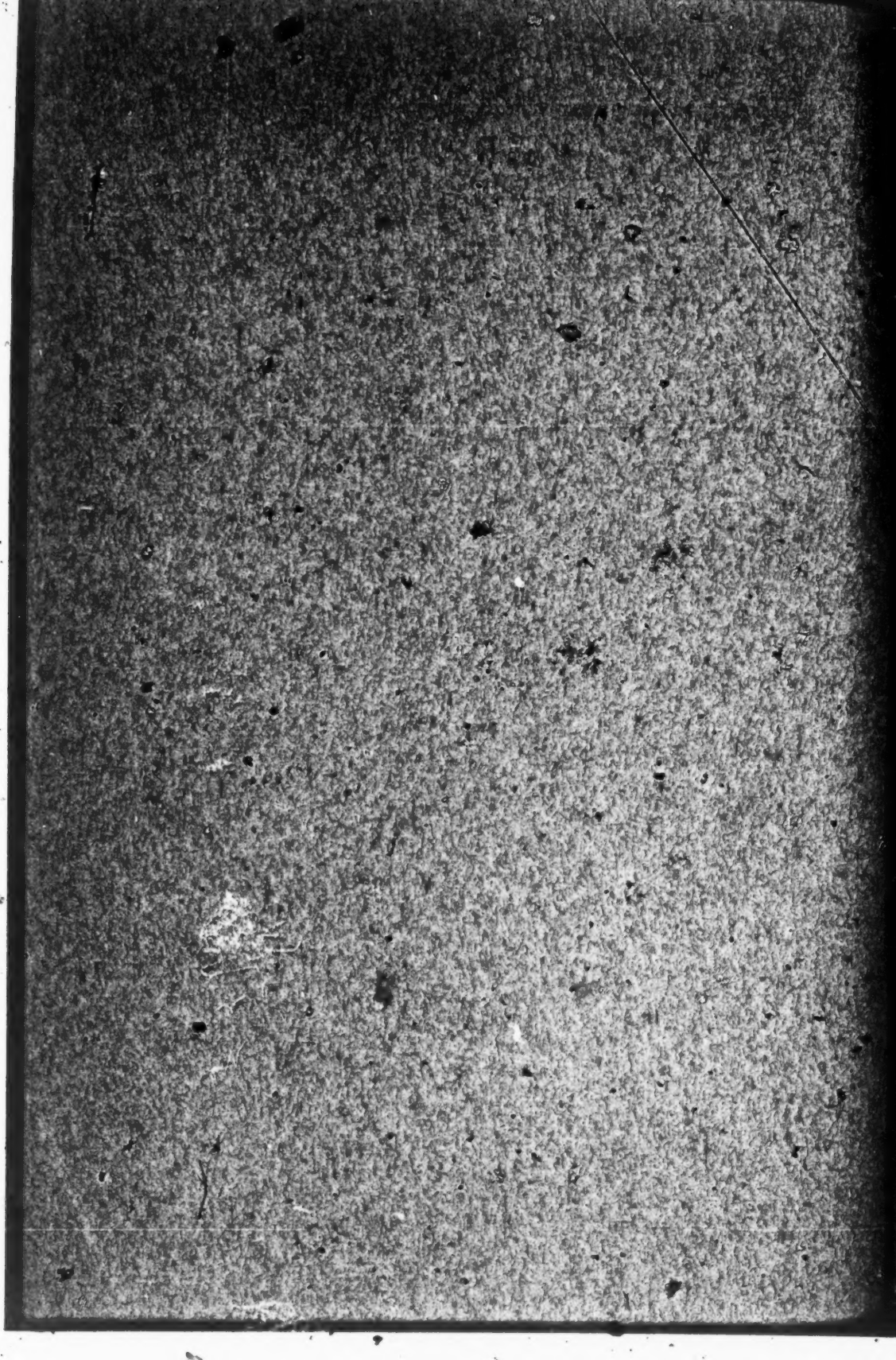

In The

Supreme Court of the United States

October Term, 1963.

No. 298.

MRS. MARGARET SHEA LYNCH, *Petitioner,*

v.

THE UNITED STATES OF AMERICA.

On Writ Of Certiorari To the United States Circuit Court Of Appeals For the Fifth Circuit.

SUPPLEMENTAL BRIEF FOR PETITIONER.

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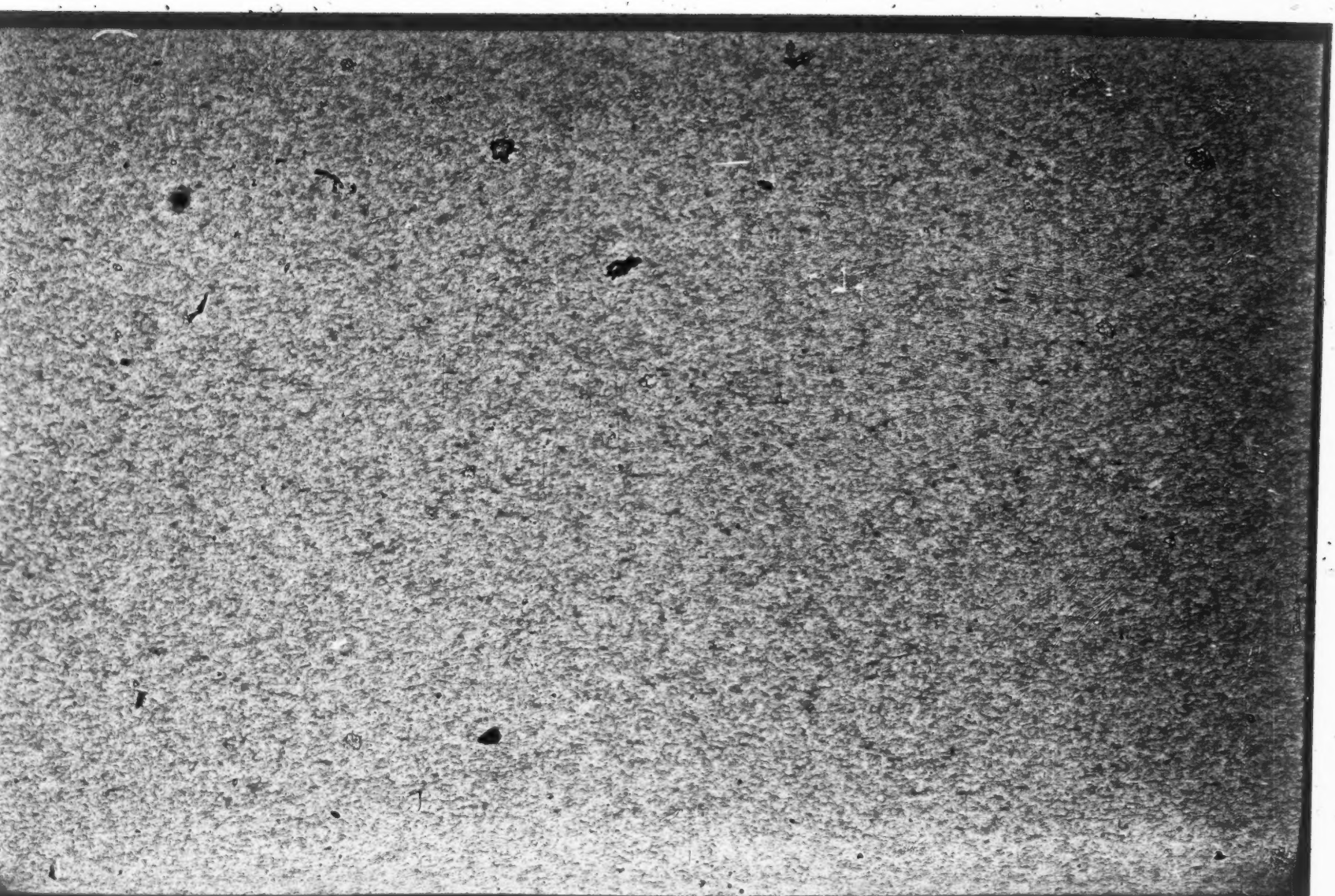

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In The

Supreme Court of the United States

October Term, 1933.

No. 855.

MRS. MARGARET SHEA LYNCH, *Petitioner,*

v.

THE UNITED STATES OF AMERICA.

On Writ Of Certiorari To the United States Circuit Court Of Appeals For the Fifth Circuit.

SUPPLEMENTAL BRIEF FOR PETITIONER.

The Government brief and supplementary brief require an answer.

1. The Declaration Sufficiently Stated a Case Bringing It Within the Jurisdictional Limitation.

The declaration alleged (a) that the insured became totally and permanently disabled while said policy was

in force, (b) that a claim thereon was filed, (c) that the Veterans' Administration denied the claim solely by reason of the repealing clause in the Economy Act.

In order to bar the suit defendant's plea must be an answer to any case which may be established under the declaration. Such plea cannot be sustained if it rests for its validity upon a supposed state of facts which may not exist.

Lyon v. Bertram, 20 How. 151.

In the case at bar the declaration permits plaintiff to prove that every jurisdictional element was complied with. The declaration is sufficiently broad to permit proof of all necessary jurisdictional elements.

2. Consent To Be Sued May Not Be Withdrawn, Where Such Withdrawal Impairs the Obligation Of a Contract.

The distinction between the cases cited by the Government in its supplemental brief (pages 3-4) and the case at bar, is that in the cases cited, the law withdrawing consent to be sued, did not cancel the contract obligation, and all except the Alabama case provided for declaratory or advisory judgments, instead of final judgments on which execution might issue.

In the Alabama case, while it was the duty of the Comptroller to pay the judgment, such duty is not comparable to the duty of the Bureau under the war risk insurance statutes.

(1) A great deal of the money payable on war risk insurance obligations arose from premium payments. Over 500 million dollars was received by the United

States on such payments (Cong. Record Mar. 14, 1933, p. 342) and this was covered into the Treasury to the credit of the military and naval insurance appropriation.

(2) All sums appropriated prior to July 3, 1930, for military and naval insurance where unexpended, were likewise covered into the Treasury to be made available for the Bureau.

(3) *All premiums collected after July 3, 1930, on yearly renewable term insurance were required to be deposited and covered into the Treasury and "made available for the payment of the liabilities of the United States incurred under contracts of yearly renewable term insurance * * * including the refund of premiums and such liabilities as shall have been or shall hereafter be reduced to judgment in a district court of the United States or in the Supreme Court of the District of Columbia.*

Title 38 U. S. C. A., Sec. 442 as amended July 3, 1930, c. 849, Par. 3, 46 Stat. 992.

(4) Under the foregoing law, a fund exists or should exist, if the same has not been dissipated, for the payment of legitimate claims arising on the war term policies. The necessity to secure a specific appropriation with which to pay a judgment is thus removed from consideration. In this respect it differs from judgments rendered in the Court of Claims.

3. A Perfected Right Under a Contract May Not Be Extinguished By Subsequent Legislation, Although the Form Of Remedy May Be Changed.

The evil of Sec. 17 of the Economy Act is that it obliterates the contract, and likewise extinguishes all forms of remedy thereon. In this it is unlike *Bryson v. Hines, 268 Fed. 290,* cited by defendant. For in that case while the Director General was relieved from suits of a certain nature, the complainant was provided a remedy in the War Risk Insurance Bureau.

In a note found in *20 Law Ed. (U. S.) 154*, the following statement appears:

> "When a right has arisen under a contract, or a transaction in the nature of a contract authorized by statute, has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right which stands independent of the statute."
>
> *Steamship Company v. Joliffe, 2 Wall. 450;*
> *Struebel v. Milwaukee, 13 Wis. 67;*
> *Rice v. R. Company, 1 Black 358;*
> *Prusseaux v. Welch, 2 West L. M. 209;*
> *Sinking Fund Commissioners v. Northern Bank, 1 Met. 174;*
> *Creighton v. Pragg, 21 Cal. 115;*
> *Ex parte Graham, 13 Rich. Law 277.*

The prevailing opinion in the *Sinking Fund cases* bears this out, for Mr. Justice Waite who wrote the court's opinion said:

> "No change can be made in the title created by the grant of land, or in the contract for the subsidy bonds, without consent of the corporation. All this

> is indisputable * * * it cannot unmake contracts that have already been made, but it may provide for what shall be done in the future, and may direct what preparation shall be made for the due performance of contracts already entered into."

This case establishes the rule that the Government may not cancel a valid outstanding contract, under which vested rights have accrued. To hold otherwise would be to disregard the Fifth Amendment to the Constitution.

We submit that the judgment should be reversed.

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